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Intoxicating Liquors-Search and Seizure-Probable Cause

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INTOXICATING LIQUORS—SEARCH AND SEIZURE—PROBABLE CAUSE—Acting on information furnished by an anonymous telephone call, officers searched an oil truck driven by Ds, and found liquor. Truck had no markings, no oil faucets, had several milk cans on the sides, was carrying but

one Illinois license plate, was being driven on a highway commonly used by rum runners and the drivers refused to stop when first ordered and laughed when arrested. Held combination of suspicious circumstances gave officers reasonable and probable grounds to believe a felony was being committed and justified a search of the car without a warrant under *Burns* 1926, Secs. 2175 and 2748 (the quotation of Sec. 2175 by the reporter, Sec. 2176 is probably the one meant). *Faut v. State*, Sup. Ct. Ind., Oct. 8, 1929, 168 N. E. 124.

The question of probable cause in search and seizure cases is still very unsettled in Indiana but such cases as have been decided have shown a tendency to be careful that the circumstances were sufficiently suspicious to justify the search. An officer who has not learned, thru the exercise of his senses or thru other reliable information, facts which would justify a reasonable person in believing that a felony was being committed cannot search an automobile without a warrant. *Eiler v. State*, 196 Ind. 252. An anonymous telephone call is not strong enough grounds to justify a search, even when the cars were described and officers noticed them to be heavily laden. *U. S. v. Allen*, 16 Fed. (2nd) 320, (cited with approval in the principal case). Search after an arrest on other grounds was held sufficient in *Koseloski v. State*, 199 Ind. 546, 158 N. E. 902; *Hoberstick v. State*, 196 Ind. 145, 147 N. E. 625. But no other offense was apparent here, operation with one license plate being permitted under *Burns* 1926, Sec. 10087. The suspicious character of an automobile alone is not sufficient ground for search. *Robinson v. State*, 197 Ind. 144, 149 N. E. 891; *Boyd v. State*, 198 Ind. 55, 152 N. E. 278. But container commonly used to carry liquor, carried in plain sight in the car, gives rise to probable cause *Thomas v. State*, 196 Ind. 234, 146 N. E. 850; *Guelting v. State*, 196 Ind. 643, 148 N. E. 146. Refusal of driver to stop when hailed by officers is not reasonable grounds for belief that driver was transporting liquor. *Robinson v. State*, 197 Ind. 144, 149 N. E. 891. Demeanor of one who, after being stopped by a sheriff, not having actual knowledge that a felony is being committed, told officer that car contained "red whiskey" was held to be insufficient grounds for search of the car by the sheriff. *Danaster v. State*, 197 Ind. 635, 151 N. E. 724.

The majority of states have followed the Federal rule of allowing a wide discretion in the officers making a search of a car. "Information from a credible source, together with facts indicating such information is correct will justify a search of an automobile without a search warrant." *Brady v. U. S.*, 300 Fed. 540; *People v. De Caesar*, (Mich., 1922) 190 N. W. 302. Suspicious actions of one on previous occasions were held sufficient cause for search in *Hauck v. State*, (Ohio, 1922) 140 N. E. 112. The fact that the one arrested was driving on a road notorious for its use by bootleggers was held to lessen the requirements for probable cause in *La-fazia v. U. S.*, 4 Fed. (2nd) 817.

The principal case, while requiring less comprehensive reasons to justify search without a warrant than most previous Indiana decisions, seems sound and is probably in accord with the majority of states. J. S. G.